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SENATE BILL 75

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

PHIL A. GRIEGO

AN ACT

RELATING TO TAXATION; AMENDING THE GASOLINE TAX ACT TO CHANGE AND CLARIFY WHEN GASOLINE IS RECEIVED FOR PURPOSES OF THE IMPOSITION OF THE GASOLINE TAX; ALLOWING A CREDIT AGAINST THE GASOLINE TAX FOR SIMILAR TAX IMPOSED BY AND PAID TO AN INDIAN NATION, TRIBE OR PUEBLO ON THE SAME GASOLINE; AUTHORIZING CERTAIN COOPERATIVE AGREEMENTS WITH INDIAN NATIONS, TRIBES OR PUEBLOS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-13-2 NMSA 1978 (being Laws 1971, Chapter 207, Section 2, as amended) is amended to read:

"7-13-2. DEFINITIONS. -- As used in the Gasoline Tax Act:

A. "aviation gasoline" means gasoline sold for use in aircraft propelled by engines other than turbo-prop or jet-type engines;

Underscored material = new  
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1           B. "department" means the taxation and revenue  
2 department, the secretary of taxation and revenue or any  
3 employee of the department exercising authority lawfully  
4 delegated to that employee by the secretary;

5           C. "distributor" means any person, not including  
6 the United States of America or any of its agencies except to  
7 the extent now or hereafter permitted by the constitution and  
8 laws thereof, who receives gasoline in this state.

9 "Distributor" shall be construed so that a person  
10 simultaneously may be both a distributor and a retailer or  
11 importer;

12           D. "drip gasoline" means a combustible hydrocarbon  
13 liquid formed as a product of condensation from either  
14 associated or nonassociated natural or casing head gas and  
15 that remains a liquid at room temperature and pressure;

16           E. "ethanol blended fuel" means gasoline  
17 containing a minimum of ten percent by volume of denatured  
18 ethanol, of at least one hundred ninety-nine proof, exclusive  
19 of denaturants;

20           F. "fuel supply tank" means any tank or other  
21 receptacle in which or by which fuel may be carried and  
22 supplied to the fuel-furnishing device or apparatus of the  
23 propulsion mechanism of a motor vehicle when the tank or  
24 receptacle either contains gasoline or gasoline is delivered  
25 into it;

Underscored material = new  
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1           G. "gallon" means the quantity of liquid necessary  
2 to fill a standard United States gallon liquid measure or that  
3 same quantity adjusted to a temperature of sixty degrees  
4 fahrenheit at the election of any distributor, but a  
5 distributor shall report on the same basis for a period of at  
6 least one year;

7           H. "gasoline" means any flammable liquid  
8 hydrocarbon used primarily as fuel for the propulsion of motor  
9 vehicles, motorboats or aircraft except for diesel engine  
10 fuel, kerosene, liquefied petroleum gas, compressed or  
11 liquefied natural gas and products specially prepared and sold  
12 for use in aircraft propelled by turbo-prop or jet-type  
13 engines;

14           I. "government-licensed vehicle" means a motor  
15 vehicle lawfully displaying a registration plate, as defined  
16 in the Motor Vehicle Code, issued by the United States or any  
17 state, identifying the motor vehicle as belonging to the  
18 United States or any of its agencies or instrumentalities or  
19 an Indian nation, tribe or pueblo or any of its political  
20 subdivisions, agencies or instrumentalities;

21           J. "highway" means every road, highway,  
22 thoroughfare, street or way, including toll roads, generally  
23 open to the use of the public as a matter of right for the  
24 purpose of motor vehicle travel regardless of whether it is  
25 temporarily closed for the purpose of construction,

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1 reconstruction, maintenance or repair;

2 K. "motor vehicle" means any self-propelled  
3 vehicle or device that is either subject to registration under  
4 Section 66-3-1 NMSA 1978 or used or that may be used on the  
5 public highways in whole or in part for the purpose of  
6 transporting persons or property and includes any connected  
7 trailer or semitrailer;

8 L. "person" means an individual or any other  
9 entity, including, to the extent permitted by law, any  
10 federal, state or other government or any department, agency,  
11 instrumentality or political subdivision of any federal, state  
12 or other government;

13 M "rack operator" means the operator of a  
14 refinery in this state or the owner of gasoline stored at a  
15 pipeline terminal in this state;

16 [N. ~~"received" means:~~

17 (1)

18 (a) ~~gasoline that is produced, refined,~~  
19 ~~manufactured, blended or compounded at a refinery in this~~  
20 ~~state or stored at a pipeline terminal in this state by any~~  
21 ~~person is "received" by such person when it is loaded there~~  
22 ~~into tank cars, tank trucks, tank wagons or other types of~~  
23 ~~transportation equipment or when it is placed into any tank or~~  
24 ~~other container from which sales or deliveries not involving~~  
25 ~~transportation are made;~~



Underscored material = new  
[bracketed material] = delete

1 ~~"received" at the time and place it is first unloaded in this~~  
2 ~~state and by the person who is the owner thereof immediately~~  
3 ~~preceding the unloading, unless the owner immediately after~~  
4 ~~the unloading is a registered distributor, in which case such~~  
5 ~~registered distributor is considered as having received the~~  
6 ~~gasoline;~~

7           ~~θ.]~~ N. "retailer" means a person who sells  
8 gasoline generally in quantities of thirty-five gallons or  
9 less and delivers such gasoline into the fuel supply tanks of  
10 motor vehicles. "Retailer" shall be construed so that a  
11 person simultaneously may be both a retailer and a distributor  
12 or wholesaler;

13           ~~[P.]~~ 0. "secretary" means the secretary of  
14 taxation and revenue or the secretary's delegate;

15           ~~[Q.]~~ P. "taxpayer" means a person required to pay  
16 gasoline tax;

17           ~~[R.]~~ Q. "unloaded" means removal of gasoline from  
18 tank cars, tank trucks, tank wagons or other types of  
19 transportation equipment into a nonmobile container at the  
20 place at which the unloading takes place; and

21           ~~[S.]~~ R. "wholesaler" means a person who is not a  
22 distributor and who sells gasoline in quantities of thirty-  
23 five gallons or more and does not deliver such gasoline into  
24 the fuel supply tanks of motor vehicles. "Wholesaler" shall  
25 be construed so that a person simultaneously may be a

Underscored material = new  
[bracketed material] = delete

1 wholesaler and a retailer."

2 Section 2. A new section of the Gasoline Tax Act is  
3 enacted to read:

4 "[NEW MATERIAL] WHEN GASOLINE IS RECEIVED. --

5 A. Gasoline that is produced, refined,  
6 manufactured, blended or compounded at a refinery in this  
7 state or stored at a pipeline terminal in this state by any  
8 person is received by such person when it is loaded there into  
9 tank cars, tank trucks, tank wagons or other types of  
10 transportation equipment or when it is placed into any tank or  
11 other container from which sales or deliveries not involving  
12 transportation are made; however:

13 (1) when such gasoline is delivered at the  
14 refinery or pipeline terminal to another person registered as  
15 a distributor under the Gasoline Tax Act, then it is received  
16 at that time and place by the distributor to whom it is so  
17 delivered; and

18 (2) when such gasoline is delivered at the  
19 refinery or pipeline terminal to another person not registered  
20 as a distributor under the Gasoline Tax Act for the account of  
21 a person that is so registered, then it is received at that  
22 time and place by the distributor for whose account it is  
23 delivered.

24 B. Any product other than gasoline that is blended  
25 to produce gasoline other than at a refinery or pipeline

Underscored material = new  
[bracketed material] = delete

1 terminal in this state is received by a person who is the  
2 owner thereof at the time and place the blending is completed.

3 C. Gasoline imported into New Mexico by any means  
4 other than in the fuel supply tank of a motor vehicle or by  
5 pipeline is received at the time and place it is imported into  
6 this state. The person who owns the gasoline at the time of  
7 importation receives the gasoline and shall pay the gasoline  
8 tax.

9 D. If gasoline is received within the exterior  
10 boundaries of an Indian reservation or pueblo grant in this  
11 state and the person receiving the gasoline is immune from  
12 state taxation, then the gasoline is also received when the  
13 gasoline is transported off that reservation or pueblo grant  
14 by any means other than in the fuel supply tank of a motor  
15 vehicle. Any person who owns the gasoline, other than in the  
16 fuel supply tank of a motor vehicle, after the transportation  
17 off that reservation or pueblo grant receives the gasoline and  
18 shall pay the gasoline tax unless the gasoline tax has been  
19 paid by a previous owner.

20 E. If gasoline is received outside the exterior  
21 boundaries of an Indian reservation or pueblo grant in this  
22 state but still within Indian country, as defined by federal  
23 law, of that reservation or pueblo grant and the person  
24 receiving the gasoline is immune from state taxation, then the  
25 gasoline is also received when the gasoline is transported off

Underscored material = new  
[bracketed material] = delete

1 that Indian country by any means other than in the fuel supply  
2 tank of a motor vehicle. Any person who owns the gasoline,  
3 other than in the fuel supply tank of a motor vehicle, after  
4 the transportation off that Indian country receives the  
5 gasoline and shall pay the gasoline tax unless the gasoline  
6 tax has been paid by a previous owner. "

7 Section 3. A new section of the Gasoline Tax Act is  
8 enacted to read:

9 "[NEW MATERIAL] CREDIT--GASOLINE TAX--TAX PAID TO INDIAN  
10 NATION, TRIBE OR PUEBLO. --

11 A. A credit may be taken against gasoline tax due  
12 pursuant to the Gasoline Tax Act on gasoline on which a  
13 qualifying gasoline or similar tax has been levied by an  
14 Indian nation, tribe or pueblo in this state and paid by the  
15 taxpayer to that Indian nation, tribe or pueblo. The amount  
16 of the credit shall be equal to the lesser of the amount that  
17 would be due at fifty percent of the tax rate imposed by the  
18 Indian nation, tribe or pueblo on the gasoline or the amount  
19 that would be due at fifty percent of the tax rate imposed by  
20 the Gasoline Tax Act on the same gasoline.

21 B. A qualifying gasoline or similar tax levied by  
22 an Indian nation, tribe or pueblo shall be limited to a tax  
23 that:

24 (1) is substantially similar to the tax  
25 imposed by the Gasoline Tax Act;

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Underscored material = new  
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1 (2) does not discriminate among persons or  
2 transactions based on membership in the Indian nation, tribe  
3 or pueblo;

4 (3) is levied on the taxable event at a rate  
5 not greater than seventeen cents (\$.17) per gallon;

6 (4) provides a credit against the Indian  
7 nation's, tribe's or pueblo's tax equal to the lesser of the  
8 amount that would be due at fifty percent of the tax rate  
9 imposed by the Indian nation, tribe or pueblo on the gasoline  
10 or the amount that would be due at fifty percent of the tax  
11 rate imposed by the Gasoline Tax Act;

12 (5) is subject to a cooperative agreement  
13 between the Indian nation, tribe or pueblo and the secretary  
14 pursuant to the Taxation and Revenue Department Act and in  
15 effect at the time of the taxable transaction; and

16 (6) produces revenues to be used within the  
17 exterior boundaries of the Indian reservation or pueblo grant  
18 or land held in trust for the benefit of the nation, tribe or  
19 pueblo for the same purposes for which the state road fund is  
20 used. "

21 Section 4. A new section of the Taxation and Revenue  
22 Department Act is enacted to read:

23 "[NEW MATERIAL] COOPERATIVE AGREEMENTS WITH INDIAN  
24 NATION, TRIBE OR PUEBLO. --

25 A. The secretary may enter into cooperative

Underscored material = new  
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1 agreements with an Indian nation, tribe or pueblo for the  
2 exchange of information and the reciprocal joint or common  
3 enforcement, administration, collection, remittance and audit  
4 of gasoline tax revenues of the party jurisdictions.

5 B. Money collected by the department on behalf of  
6 an Indian nation, tribe or pueblo in accordance with an  
7 agreement entered into pursuant to this section is not money  
8 of this state and shall be collected and disbursed in  
9 accordance with the terms of the agreement, notwithstanding  
10 any other provision of law.

11 C. The secretary is empowered to promulgate such  
12 rules and regulations and to establish such procedures as the  
13 secretary deems appropriate for the collection and  
14 disbursement of funds due an Indian nation, tribe or pueblo  
15 for the receipt of money collected by the nation, tribe or  
16 pueblo for the account of this state under the terms of a  
17 cooperative agreement entered into under the authority of this  
18 section, including procedures for identification of taxpayers  
19 or transactions that are subject only to the taxing authority  
20 of the Indian nation, tribe or pueblo; taxpayers or  
21 transactions that are subject only to the taxing authority of  
22 this state; and taxpayers or transactions that are subject to  
23 the taxing authority of both party jurisdictions.

24 D. Nothing in an agreement entered into pursuant  
25 to this section shall be construed as authorizing this state

Underscored material = new  
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1 or an Indian nation, tribe or pueblo to tax persons or  
2 transactions that federal law prohibits that government from  
3 taxing or as authorizing a state, tribal or pueblo court to  
4 assert jurisdiction over persons who are not otherwise subject  
5 to that court's jurisdiction or as affecting any issue of the  
6 respective civil or criminal jurisdictions of this state or  
7 the Indian nation, tribe or pueblo. Nothing in an agreement  
8 entered into pursuant to this section shall be construed as an  
9 assertion or an admission by either this state or the Indian  
10 nation, tribe or pueblo that the taxes of one have precedence  
11 over the taxes of the other when the person or transaction is  
12 subject to the taxing authority of both governments. An  
13 agreement entered into pursuant to this section shall be  
14 construed solely as an agreement between the two party  
15 governments and shall not alter or affect the government-to-  
16 government relations between this state and any other Indian  
17 nation, tribe or pueblo. "

18 Section 5. EFFECTIVE DATE. --The effective date of the  
19 provisions of this act is July 1, 1998.

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1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998  
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6 January 26, 1998  
7

8 Mr. President:  
9

10 Your COMMITTEES' COMMITTEE, to whom has been referred  
11

12 SENATE BILL 75  
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14 has had it under consideration and finds same to be GERMANE, in  
15 accordance with constitutional provisions, and thence referred to the  
16 CORPORATIONS & TRANSPORTATION COMMITTEE.  
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19 Respectfully submitted,  
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Manny M. Aragon, Chairman

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

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